

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

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Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

PETITION FOR CLARIFICATION
BY
TELHAWAII, INC.

TelHawaii, Inc. ("TelHawaii"), pursuant to Section 1.429 of the Commission's Rules, hereby submits this petition for reconsideration in response to the Federal Communications Commission's May 7, 1997 Report and Order in the above captioned proceeding (the "Order").

I. INTRODUCTION

TelHawaii is a rural local exchange carrier that has been authorized by the Hawaii Public Utilities Commission to provide local exchange services as the carrier of last resort in the Ka'u area of Hawaii. On July 16, 1997, the Commission granted TelHawaii's Petition for a Study Area Waiver that allows TelHawaii to establish a new study area containing a rural telephone exchange serving approximately 2,446 access lines in the Ka'u area.¹

By this Petition, TelHawaii seeks clarification of two aspects of the Order. First, TelHawaii requests that the Commission clarify that paragraph 308 of the Order, which states that "a carrier making a binding commitment on or after May 7, 1997 to purchase a high cost

¹ See *Petition for Waivers Filed by TelAlaska, Inc. and TelHawaii, Inc.*, AAD 96-93, DA 97-1508 (rel. July 16, 1997).

exchange should receive the same level of support per line as the seller received prior to the sale” does not apply to transfer of exchanges mandated by a state commission that has replaced the carrier currently serving the area and has designated another carrier as the incumbent carrier, regardless of whether the state commission makes such a designation prior to, or after, May 7, 1997.

Second, TelHawaii requests that the Commission clarify that Hawaii is an “insular area” with respect to the Commission’s discussion in paragraphs 314-318 of the Order. In those paragraphs, the Commission determined that it need not determine when rural carriers providing service in Alaska and *insular areas* are required to move toward a forward-looking economic cost methodology for determining universal service support. Thus, rural carriers in Alaska and insular areas will be entitled to continue to use the Commission’s current universal support mechanisms, as modified by the Order, in calculating their universal support draw.

II. SALE OF EXCHANGES MANDATED BY A STATE COMMISSION SHOULD BE ENTITLED TO CURRENT UNIVERSAL SERVICE SUPPORT UNTIL RURAL CARRIERS ARE DRAWING UNIVERSAL SERVICE BASED ON FORWARD-LOOKING COSTS.

The Commission has adopted an interim policy for calculating and distributing universal service to carriers when they enter into agreements to sell exchanges during the Commission’s transition to a forward-looking economic cost methodology to calculate universal service support. Specifically, carriers that enter binding commitments to purchase exchanges after May 7, 1997, are entitled to receive the same level of support per line as the seller received prior to the sale. *Order* at ¶ 308. The Commission adopted this policy so that carriers would not place unreasonable reliance upon potential universal service support in determining whether to purchase exchanges from other carriers. *Id.*

This interim policy should not apply in those instances where a state commission has taken the extraordinary action of replacing one carrier with another carrier in light of the former carrier's inadequate provision of telecommunications services that endangers the life and property of residents and businesses in the service area, regardless of whether the state commission acts before or after May 7, 1997. In these instances, a state commission's determination that the consumers in these high cost areas are entitled to quality services at reasonable and affordable rates should not be frustrated by the Commission. The newly designated carrier should be able to receive universal service support for the newly acquired lines based upon an analysis of the average cost of all its lines, both those newly acquired and those it had prior to the acquisition of new lines.

This policy clarification is necessary to ensure that when a state commission takes the extraordinary action to replace the incumbent local exchange carrier because of a record of poor service performance, the new carrier will be able to provide services in a timely manner to the particular service area based upon the average cost of providing service in its service area (currently its study area). Moreover, this clarification is appropriate because the Commission has yet to determine the pace at which rural carriers will be required to calculate universal service support based on a forward-looking economic cost methodologies. *Order* at ¶ 314. Thus, in order to deploy services in a timely manner, especially in high cost areas, the new carrier should have the certainty to draw on the universal service fund based on the funding methodologies currently in place and as modified by the *Order*.

Further, such a policy clarification is entirely consistent with the Section 254 of the Communications Act of 1934, as amended, that mandates that consumers in rural and high

cost areas will have access to quality advanced services at just, reasonable and affordable rates. 47 U.S.C. § 254(b). These areas should not continue to only be entitled to receive poor services as the Commission transitions to a new methodology for calculating universal service support -- a transition which could last well over three years. Subscribers in these areas already have been penalized by receiving such poor service from their incumbent carrier that their state commission has had to designate a new carrier to provide adequate telecommunications services in that area.

III. HAWAII SHOULD BE INCLUDED AS AN INSULAR AREA.

The Commission specifically has noted that rural carriers operating in Alaska and insular areas deserve special treatment during the transition to forward-looking costs because of the unique circumstances facing carriers in these areas. *Order* at ¶ 314. Rural carriers operating in Hawaii face the same unique circumstances facing other insular areas, including higher shipping costs for equipment, damage by tropical storms, and extremely remote rural communities. *Id.* Indeed, the Hawaii PUC's action naming TelHawaii as the carrier of last resort in the Ka'u area permits for the first time a rural carrier to serve in the state of Hawaii.

Accordingly, the Commission should clarify that because Hawaii is now served by a rural carrier, that Hawaii is included in the Commission's separate determination of when a forward-looking economic cost methodology should be applied to rural carriers providing service in Hawaii, Alaska and other insular areas.

IV. CONCLUSION

For the foregoing reasons, TelHawaii respectfully requests that the Commission clarify its *Order* as described above.

Respectfully Submitted
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July 17, 1997

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